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In The Supreme Court of the United States

No. 10, Original, October Term, 1948

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

SUPPLEMENTAL REPORT OF NAT. U. BROWN, SPECIAL MASTER

REPUBLIC PUBLISHING COMPANY, YAKIMA, WASH.

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UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,
Defendants

SUPPLEMENTAL REPORT OF NAT. U. BROWN, SPECIAL MASTER

PLAN OF REPORT

Prior to the submission of this report, as more fully appears in it, it was my thought that the remaining issues in this case could be disposed of without further hearing by the court. Although there has been no complete agreement between the parties either as to the form of the decree or the question of the payment of the Master's fee and costs, upon my suggestion both parties have submitted proposed decrees and their arguments in support thereof which I am setting out in this report so that the court will have before it what is proposed by each of the parties and the reason for such proposals. This is done to obviate, if possible, the necessity for any further hearing or oral argument.

HISTORY OF PROCEEDINGS

The Special Master's original report was filed in this case on October 14, 1946. Plaintiff's exceptions were filed November 29, 1946, and defendants' exceptions were filed on November 22, 1946. Argument was had by the Court on April 7, 1947, and on June 2, 1947, the opinion of the Court was delivered by the Chief Justice where the Master's report on the basic question of title was accepted and confirmed. However, by order of the Court the matter was re-referred to the Master, first, to try the issue of the defendants' good faith through the entire period in dispute, and, second, to hear evidence and make special findings as to the value of the oil produced and the amount and nature of any collateral proceeds from the operation, separately, and as to the amount of each item of income and expense by the month or year.

On February 16, 1948, on motion of the plaintiff the Court entered a decree adjudging the United States to be the owner of Section 36 of Township 58, North of Range 100, West of the Sixth Principal Meridian, located in Park County, Wyoming, and that the defendants had no right, title or interest in the land. That decree reserved jurisdiction of the Court for making such further orders as may be necessary.

PROCEEDINGS SINCE DECREE

Immediately after the decree of the court steps were taken by the Special Master to bring the remaining issues on for hearing and from time to time hearing dates were set but the parties to the action from time to time asked for continuance and delay in order that a settlement might be worked out.

On February 25, 1948, the Ohio Oil Company wrote the following letter to the Attorney General:

"THE OHIO OIL COMPANY

Findlay, Ohio
February 25, 1948

"The Attorney General
Department of Justice
Washington, D. C.

"My Dear Mr. Attorney General:

"The Ohio Oil Company hereby makes the offer hereinafter set forth in detail, in compromise and full settlement of the Government's claim for a money judgment against both of the defendants in the case of United States v. State of Wyoming and The Ohio Oil Company, No. 10, Original, in the Supreme Court.

"1. The Company offers to pay $24,104.42, representing settlement in full for the Government's claim for a money judgment covering the period from the beginning of production on the E½NE¼ of the Section 36 in controversy up to June 1, 1947. For the purpose of this compromise, the date June 1, 1947, is accepted as the date of the entry of the

opinion of the Supreme Court, although that opinion in fact was entered on June 2, 1947.

"2. From June 1, 1947, up to the date that the property is surrendered to the United States, The Ohio Oil Company will account to the United States for the oil extracted during that period on the basis of the gross value of the oil, less the direct operating expenses, including maintenance and repairs, incurred by the Company. It is understood that the operation of the wells on the E½NE¼ of Section 36 is being conducted for The Ohio Oil Company by Stanolind Oil and Gas Company. The direct operating expenses, including maintenance and repairs, to be deducted from the gross value of the oil are not to exceed the charges made by the Stanolind Oil and Gas Company.

"3. If and when the property is surrendered to the United States, the wells and lease equipment installed or used in connection with the operation of said wells, are to be considered as a part of the property to be surrendered.

"This offer is made on the following conditions:

"a. The compromise is not to be used by any of the parties for the purpose of advocating or resisting pending legislation aimed at vesting Wyoming with title to the land in controversy.

"b. In the event this offer is accepted, it shall not be consummated until the expiration of the present Congress. If the pending legislation referred to above becomes law, this offer shall be considered as withdrawn. If, by the expiration of the present Congress, the pending legislation referred to above has not become law, (i) The Ohio Oil Company promptly shall pay to the United States the sum of $24,104.42, (ii) unless delivery of possession has

been made prior to that date, The Ohio Oil Company shall deliver to the agent designated by the United States, the property in controversy, including the wells and lease equipment aforesaid on the E½NE¼ of Section 36, in good operating condition (having due regard for its age and present condition), and (iii) at the same time The Ohio Oil Company shall pay to the United States the amount required to be paid by paragraph number 2 of this offer.

"c. It is understood that The Ohio Oil Company now is in possession, but this compromise shall not prejudice the right of the United States to obtain possession of the land at any time prior to the consummation of this offer.

"Very truly yours,

/s/ A. M. Gee
A. M. GEE
General Counsel
The Ohio Oil Company"

On March 19, 1948, this offer was accepted by the plaintiff.

The Special Master agreed with all parties then to withhold any final report until after the adjournment of the 80th Congress. On July 2, 1948, Public Law 887, chapter 815, 80th Congress, 2d Session, was approved, providing:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent to the State of Wyoming for the east half of the northeast quarter, section 36, township 58 north, range 100 west, of the sixth principal meridian, in Park

County, Wyoming, subject to any existing lease or leases: Provided, That title to said land shall be held and considered to have been vested in the State of Wyoming on July 10, 1890."

Inasmuch as it appeared from the proceedings, the evidence and the previous report that The Ohio Oil Company had actual possession of and extracted oil only from the land described in this law and that the demand for a money judgment related only to the operations on this property, no further consideration by the Court of the demand for a money judgment is necessary.

DECREES PROPOSED BY PARTIES

The only remaining issues between the parties, therefore, is the form of the final decree and the question of the payment of costs and compensation and expense of the Special Master. In the hope that this question might likewise be settled between the parties the Special Master called upon each party to submit a proposed decree. That proposed by the plaintiff reads as follows:

"This cause was heretofore submitted on the report of the Special Master and the exceptions of the parties thereto, and the decision of this Court was announced on June 2, 1947 (331 U. S. 440). In accordance with that decision the cause was recommitted to the Special Master for further hearings and report with respect to the demand of the United States for a money judgment on account of the oil

extracted from the land in controversy during the period of the defendants' possession. On February 16, 1948, on motion of the United States, and for the purpose of carrying into effect the conclusions of this Court with respect to the ownership of the land, as stated in its opinion announced June 2, 1947, this Court entered a decree adjudging that the United States is the owner of Section 36 of Township 58, North of Range 100, West of the Sixth Principal Meridian, located in Park County, Wyoming, and that the defendants have no right, title or interest in said land. The decree reserved jurisdiction of the cause for the purpose of making such further orders as may be necessary.

"The Special Master herein has submitted a report pursuant to this Court's decision of June 2, 1947. The report is received and ordered filed.

"Public Law 887, chapter 815, 80th Cong., 2d Sess., approved July 2, 1948, provides:

> 'That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent to the State of Wyoming for the east half of the northeast quarter, section 36, township 58 north, range 100 west, of the sixth principal meridian, in Park County, Wyoming, subject to any existing lease or leases: *Provided*, That title to said land shall be held and considered to have been vested in the State of Wyoming on July 10, 1890.'

"From the pleadings, evidence and the report of the Special Master it appears that The Ohio Oil Company had actual possession of, and extracted oil from, only the east half of the northeast quarter of said section 36 and that the demand of the United States for a money judgment relates only to the operations of The Ohio Oil Company on the east half of the northeast quarter of section 36. In

view of the provisions of Public Law 887, approved July 2, 1948, further consideration of the demand of the United States for a money judgment is not necessary.

"It is, therefore, ordered, adjudged and decreed that:

"1. Each of the parties pay its own costs.

"2. The defendants pay the expenses of the Special Master and the amount fixed by the Court as compensation of the Special Master."

That proposed by the defendants, after making the necessary recitations, reads as follows:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

"1. The United States is the owner in fee and entitled to the possession of the W½NE¼, the NW¼ and the S½ of Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, in Park County, Wyoming.

"2. The State of Wyoming is the owner in fee and entitled to the possession of the E½NE¼ of Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, in Park County, Wyoming, subject to all leases issued by it subsequent to July 10, 1890.

"3. The defendants have no right, title or interest in or to the W½NE¼, the NW¼ or the S½ of said Section 36.

"4. Plaintiff has no right, title or interest in or to the E½NE¼ of said Section 36.

"5. Plaintiff's complaint against defendants for an accounting and for the value of all gas, oil and other petroleum products extracted from said land by the defendants or either of them, with interest thereon, should be and is hereby in all things denied.

"6. The compensation to the Honorable Nat. U. Brown, Master, for services in connection herewith is fixed and established at $..... and his actual expenses, including compensation paid for stenographic and clerical assistance and the cost of printing his report, is $....., making a total of compensation and expenses to him of $....., which said sum shall be paid seven-eighths by plaintiff and one-eighth by defendants."

ARGUMENTS OF PARTIES

In support of the first five paragraphs of the proposed decree by the defendants it is argued by the defendants, at least inferentially, that the interlocutory decree of February 16, 1948, should be set aside and that the Court should find the ownership of the land in accordance with the Act of Congress above quoted. It is the position of the Government, however, that the decree of February 16, 1948, was final, quieted the title to the entire section in the United States and "what Congress does thereafter with the land is of no concern of the Court. If the State of Wyoming is to obtain title to the east half of the northeast quarter, it must do so under the provisions of the Act of July 2, 1948, and not otherwise."

The defendants' argument in support of that decree submitted by them relating to the Master's fee and expenses is succinctly stated in the argument before the Master as follows:

> "As to the matter of the Master's fee and expenses, it is perfectly clear that if such items were to be considered as costs, there could be no recovery thereof by the United States under Rule 32.5 of the Supreme Court Rules. Moreover, if the court had considered that such items were to be paid by the unsuccessful party on the ultimate title, it could have so provided in its order of April 25, 1945, appointing the Master. The suggestion which we made with reference to the division of these items would seem to be perfectly fair in view of the fact that the ultimate result of the suit and the Act is to recognize the United States as the owner of 7/8 of the section before final disposition. The United States instituted the suit in the Supreme Court, undoubtedly knowing that in such a proceeding the services of a Master might reasonably be required. Having initiated such a proceeding with such ultimate result, it should be perfectly willing to agree to the fair and equitable division which we have suggested, bearing in mind that the State's title was not questioned for more than thirty years after its lessee had entered into possession and more than thirty years after the first production had been obtained. If the plaintiff had been anyone other than the United States, it could not have recovered because of such unprecedented laches and stale demands, if for no other reason.
>
> "We, therefore, respectfully submit that the form of Final Decree forwarded to you with our letter of August 13th is in all respects proper."

In answer to this argument the Government insists:

> "With respect to the payment of the expenses and compensation of the Special Master, Mr. Everett states in his letter 'that it would be fair for the parties to bear and pay such allowance in the same proportion as the acreage recovered by them bears to the whole section,' and the defendants' proposed decree provides for payment by the United States of seven-eighths of the amount allowed. This proposal apparently is based on the premise that the defendants recovered one-eighth of section 36 in this litigation. The premise, of course, is without foundation in fact, since title to all of section 36 has been quieted in the United States. We are dealing only with expenses incurred in this action. In the usual case, the prevailing party is not charged with the expenses of the litigation. The United States is the prevailing party in this case on the only issue adjudicated, namely, the title to section 36. The Government again urges that the expenses and compensation of the Special Master be charged to the defendants, as provided in the proposed decree submitted with the Department's letter of August 10, 1948."

FINDINGS

On that portion of the proposed decree that relates to the ownership of the land I am not disposed to follow the suggestion of the defendants in any way. The question of the ownership of the entire section has been determined by this court. The enactment of July 2, 1948, has not in any manner changed that adjudication but simply directs the proper officers of the United States to divest it of title to a portion of the land and to grant it to the state of Wyoming as of July 10, 1890. It

is not necessary in any manner to disturb the interlocutory decree heretofore entered on February 16, 1948.

It is not necessary for the Court to consider whether the approval of the Act of July 2, 1948, actually vests title in the State of Wyoming or not. It is sufficient that all parties do agree that by the approval of that Act the remaining question that is before the Court in this litigation, namely, the demand for a money judgment by the United States against the defendants, has been withdrawn from the consideration of this Court.

As to the portion of the decree relating to the compensation of the Special Master for services and expenses, I am not inclined either to follow the suggestion of the defendants in their proposed decree, nor my former report in this matter which recommended that these costs be divided equally between the parties hereto. That recommendation was based upon the finding that the State of Wyoming was in good faith in its occupation of the land and that The Ohio Oil Company likewise had occupied in good faith. This issue has been withdrawn from the consideration of this Court by the legislative branch of the government and the agreement of the parties. Had it been left to this Court to decide it is impossible to say what that decision would have been as what evidence on this point would have

been produced is unknown to the Special Master or the Court.

As the situation stands, therefore, the plaintiff, so far as the issues of this case submitted to the Court are concerned, has been entirely successful. For that reason, as successful litigant before this Court, it should not be penalized by being subjected to the payment of any portion of the Special Master's fee.

PROPOSED DECREE

It is, therefore, my recommendation that a decree in this matter be entered as follows:

1. This Court having on February 16, 1948, on motion of the plaintiff herein entered a decree adjudging that the plaintiff, the United States, is the owner of section 36, township 58 north, range 100 west, of the sixth principal meridian, located in Park County, Wyoming, and that the defendants have no right, title or interest in said land, and the Court having reserved jurisdiction of the cause for the purpose of making such other orders as may be necessary, and the Special Master having submitted a report pursuant to such decree, and the Court's decision heretofore filed on the 2nd day of June, 1947, and it further appearing that an Act of Congress has been passed being Public Law

887, chapter 815, 80th Congress, 2d Session, approved July 2, 1948, which provides:

> "That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent to the State of Wyoming for the east half of the northeast quarter, section 36, township 58 north, range 100 west, of the sixth principal meridian, in Park County, Wyoming, subject to any existing lease or leases: *Provided*, That title to said land shall be held and considered to have been vested in the State of Wyoming on July 10, 1890."

and it further appearing that the defendant The Ohio Oil Company had actual possession of and extracted oil only from that portion of section 36 described in said Act of Congress and that the demand of the plaintiff for a money judgment relates only to the operations of the defendant The Ohio Oil Company on that portion of section 36 described in said Act of Congress, and that by reason thereof no further consideration of the demand of the plaintiff for a money judgment is necessary, it is

ORDERED, ADJUDGED AND DECREED that the decree entered herein on the 16th day of February, 1948, be and it is hereby made final, and it is further

ORDERED, ADJUDGED AND DECREED, that each of the parties hereto pay its own costs, and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants pay the expenses of the Special Master and an amount to be fixed by this Court as compensation for the Special Master.

Respectfully submitted,

NAT. U. BROWN
Special Master.